IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 4528 of 2006
Date of decision : 31.10.2006.

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Parties Name

Haryana State Industrial Development Corporation Limited, Sector 6, Panchkula

..... Petitioner

vs.

Aravali Engineering Private Limited

.....Respondent

Coram: Hon'ble Mr. Justice S.N. Aggarwal

Present: Sh. Aman Chaudhary, Advocate
for the petitioner.

Sh. S.S. Dalal, Advocate for
the respondent.

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S.N. Aggarwal, J. (Oral)

The respondent filed a suit for recovery of Rs.7,92,729/- in the year 1998. The petitioner took the objection regarding the jurisdiction of the Court at Chandigarh. As a result, the suit was transferred to the Court in Sessions Division, Gurgaon, where it was received on 29.11.2002. After the petitioner sought adjournment for filing of the written statement, it filed an application on 27.1.2003 for referring the matter to the arbitrator. The said application was contested by the respondent. It was decided by the learned trial Court vide order dated 7.3.2005 and the application was dismissed.

Thereafter the petitioner filed the written statement on 5.8.2005. It was taken on record. But thereafter, the respondent filed an application for striking of the defence of the petitioner for not filing the written statement within the statutory period prescribed under Order 8 Rule 1, CPC. The learned trial Court vide impugned order dated 5.10.2005 returned the written statement and struck off the defence of the petitioner.

Hence, the present petition.

The submission of the learned counsel for the petitioner was that upto 7.3.2005 the application filed by the petitioner for referring the matter to the arbitrator remained pending. Thereafter, the petitioner was to collect the record as it involved the controversy of an amount of about Rs.8 lacs and it took the procedural time to file the written statement on 5.8.2005. Reliance was placed on the judgment of the Hon'ble Supreme Court reported as **Kailash vs. Nanhku and others** 2005 (4) SCC 480 and it was submitted that the provisions of Order 8 Rule 1, CPC are directory in nature and not mandatory. Hence, it was prayed that, the impugned order be set aside and an opportunity be afforded to the petitioner to re-file the written statement.

On the other hand, learned counsel for the respondent drew the attention of this Court towards paragraphs 41, 42 and 43 of the judgment and submitted that the time can be extended only for valid reasons and even reasons have to be recorded while granting extension. It was further submitted that extension should not be granted in the routine manner and if at all it is to be granted as per the

law laid down by the Hon'ble Supreme Court, it should be on the payment of heavy costs.

After considering the submissions advanced before me by the learned counsel for the parties, this Court is satisfied that if the opportunity is denied to the petitioner in filing the written statement, it will lead to miscarriage of justice. The petitioner is a public body and as submitted by the learned counsel for the petitioner, record was to be collected for filing the written statement because it involved a huge amount. Accordingly, in the interest of justice, this petition is allowed and the petitioner is permitted to file the written statement. However, the petitioner is burdened with the costs of Rs.15,000/- which shall be payable by the petitioner in the learned trial Court to the contesting respondents.

Learned counsel for the parties submit that the next date fixed in the learned trial court is 12.12.2006. Since, it is already delayed, therefore, the file shall be taken up by the learned trial Court on 22.11.2006 on which date the petitioner would make the payment of costs for onward payment to the contesting respondents and would file the written statement.

Copy dasti on payment of usual charges.

(S.N.Aggarwal)
Judge

31.10.2006.
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